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SUMMONS

Doc. No. 1769260

IN THE COUNTY COURT OF Lancaster COUNTY, NEBRASKA
575 South 10th Street
2nd Floor
Lincoln NE 68508

James Tomko v. American Tire Distributors, Inc.

Case ID: CI 11 8451

TO: American Tire Distributors, Inc

You have been sued by the following plaintiff(s):

James Tomko

Plaintiff's Attorney: Joy Shiffermiller
Address: 1002 G Street
Lincoln, NE 68508

Telephone: (402) 484-7700

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: AUGUST 1, 2011

BY THE COURT:

Dely L. Buckner
Clerk

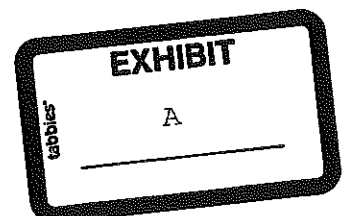


PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

American Tire Distributors, Inc
CSC-Lawyers Incorporating Svc Co
Suite 1900, 233 South 13th Street
Lincoln, NE 68508

Method of service: Certified Mail

You are directed to make such service within twenty days after date of issue, and show proof of service as provided by law.



IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA

JAMES TOMKO,

Plaintiff,

v.

AMERICAN TIRE DISTRIBUTORS,
INC.,

Defendant.

CASE NO.: C1 11-8451

COMPLAINT

INTRODUCTION

COMES NOW the Plaintiff, by and through his attorney, and for his cause of action against the Defendant, states and alleges as follows:

1. This is an action for damages against the Defendant for acts in violation of Plaintiff's rights as guaranteed under The Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq., Nebraska Wage Payment and Collection Act, Neb. Rev. Stat. § 29-1228 et seq., and for wrongful termination in violation of public policy, and Attorney Fees pursuant to 29 USC §216(b), and Neb. Rev. Stat. 1231.

VENUE

2. Plaintiff is a resident and citizen of Lincoln, Lancaster County, Nebraska.

3. Defendant American Tire Distributors, Inc., is a foreign corporation registered in the State of Delaware, and is licensed to do business in the State of Nebraska, with a place of business in Lincoln, Nebraska.

4. Defendant American Tire Distributors, Inc., is an enterprise engaged in commerce or in the production of goods for commerce as pursuant to 29 U.S.C. 203(d) and Plaintiff is an employee of the Defendant pursuant to 29 U.S.C. 203(e)(1).

5. The Plaintiff had been employed by defendant since on or about August 25, 2008, the acts and events complained about therein arose out of his employment with Defendant in this county and thus venue is proper in Lancaster County.

FACTS

6. At all times relevant, Plaintiff was employed by Defendant most recently as a Shag Batch.

7. On or about August 2009, Grant Beherens became the warehouse manager. Upon becoming warehouse manager, Mr. Beherens had access to the Plaintiff's and other employees time records.

8. Mr. Beherens would modify the Plaintiff's and other similarly situated employees' time records to show that they worked fewer hours than they actually had.

9. The Plaintiff and other similarly situated employees were not paid for hours worked as a result of Mr. Beherens' modifications of their time records.

10. The Plaintiff and other similarly situated employees were always paid at a rate of one and one-half times his regular rate of pay for hours worked over 40 hours per week.

11. Beginning in the fall of 2009, Plaintiff complained to Cassie Bartling in human resources about the modification of his time records by Mr. Beherens.

12. Plaintiff also made several complaints to Robert Zerfass, Plaintiff's night supervisor, about the modification of his time records by Mr. Beherens.

13. No action was ever taken to address the Plaintiff's complaints of Mr. Beherens conduct.

14. Mr. Beherens regularly required the Plaintiff, and other similarly situated individuals to stay past the scheduled end of their shifts, sometimes stating that the Plaintiff and other similarly situated employees would be considered to be working "volunteer time" prior to modifying their time records.

15. The Plaintiff and other individuals did not consent to working "volunteer time" as stated by Mr. Beherens.

16. As a result of Mr. Beherens actions and the refusal of the Defendant to pay the Plaintiff for all hours worked, Plaintiff was forced to resign from his position on or about April 26, 2011.

FIRST CAUSE OF ACTION
(FLSA)

17. Plaintiff incorporates all allegations in paragraphs one through 16 as though fully set out herein verbatim.

18. While the plaintiff worked for the Defendant, Plaintiff and other similarly situated employees' time records were altered to reflect that they worked fewer hours than they actually worked.

19. The foregoing actions of Defendant constitute a violation of the Fair Labor Standards Act. Defendant altered pay records and refused to pay the Plaintiff and other employees for time worked.

20. The Defendant retaliated against the Plaintiff's complaints by constructively discharging the Plaintiff following his complaints.

21. As a result of Defendant's willful actions, Plaintiff has suffered lost wages and is entitled to a like sum for amounts incurred and not paid, and attorney's fees.

SECOND CAUSE OF ACTION
(Nebraska Wage Payment and Collection Act)

22. Plaintiff incorporates all allegations in paragraphs one through 21 as though fully set out herein verbatim.

23. As a result of the Defendant's actions, Plaintiff was not paid for all hours worked.

24. Defendant's willful refusal to pay Plaintiff wages for all hours worked constitutes a breach of the Nebraska Wage Payment and Collection Act, Neb. Rev. Stat. § 48-1228 et. seq (Reissue 2004).

25. As a result of Defendant's willful actions, Plaintiff has suffered lost wages and is entitled to a like sum for amounts incurred and not paid, and attorney's fees.

CLAIM FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests this Court to issue a judgment against the Defendant and:

- a) Award damages to compensate Plaintiff for the wages he is owed;
- b) Award lost wages to the date of trial;
- c) Reinstatement the Plaintiff to his prior position or front pay for a reasonable amount of time into the future;
- c) Award Plaintiff reasonable attorney fees and costs of this trial;
- d) Assess liquidated damages against Defendant for the willful violation of the Fair Labor and Standards Act and the Wage Payment and Collection Act; and
- e) Award the Plaintiff such further relief as the Court deems just and proper.

Plaintiff hereby demands a Jury Trial.

Dated July 21, 2011.

JAMES TOMKO, Plaintiff,

By: /s/ Abby Osborn

Abby Osborn, #24527

Shiffermiller Law Office, P.C., L.L.O.

1002 G Street

Lincoln, Nebraska 68508

402-484-7700

402-484-7714 (fax)

PRAECIPE

TO THE CLERK OF SAID COURT:

Please issue a summons to:

American Tire Distributors, Inc.

CSC-Lawyers Incorporating Service Company

Suite 1900

233 South 13th Street

Lincoln, Nebraska 68508

and return the same with a copy of the Complaint, to attorney for the Plaintiff, Abby Osborn, Shiffermiller Law Office, P.C., L.L.O., 1002 G Street, Lincoln, Nebraska 68508, so that said summons may be served on Defendant by certified mail.

/s/ Abby Osborn

Abby Osborn

S
SHEFFERMILLER LAW OFFICE, P.C., L.L.O.
1002 G Street
Lincoln, NE 68508

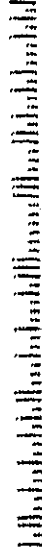
7008 2810 0002 0748 8902



VERIFIED MAIL™

American Fire Distributors, Inc.
CSC-Lawyers Incorporating Service Company
Suite 1900
233 S. 13th St.
Lincoln, NE 68508

8850932017





CORPORATION SERVICE COMPANY

Notice of Service of Process

RVP / ALL
Transmittal Number: 8976021
Date Processed: 08/03/2011

Primary Contact: Deborah Gardner
American Tire Distributors
Suite 150
12200 Herbert Wayne Court
Huntersville, NC 28078

Entity:	American Tire Distributors, Inc. Entity ID Number 1886639
Entity Served:	American Tire Distributors, Inc
Title of Action:	James Tomko vs. American Tire Distributors, Inc.
Document(s) Type:	Summons/Complaint
Nature of Action:	Wrongful Termination
Court/Agency:	Lancaster County Court, Nebraska
Case/Reference No:	CI 11-8451
Jurisdiction Served:	Nebraska
Date Served on CSC:	08/02/2011
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Certified Mail
Sender Information:	Abby Osborn 402-484-7700

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
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